

HOUSE BILL NO. 514

INTRODUCED BY L. JENT

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A TELEPHONE SOLICITATION DO NOT CALL REGISTER TO BE MAINTAINED BY THE DEPARTMENT OF COMMERCE; REQUIRING TELEPHONE SOLICITORS TO OBTAIN INFORMATION CONTAINED IN THE REGISTER; PROVIDING FOR ENROLLMENT OF RESIDENTIAL TELEPHONE SUBSCRIBERS IN THE REGISTER; PROVIDING CIVIL PENALTIES FOR TELEPHONE SOLICITATION TO PERSONS IN THE REGISTER AND FOR CIRCUMVENTING CALLER IDENTIFICATION DEVICES OR SERVICES; AND REQUIRING LOCAL EXCHANGE COMPANIES TO COOPERATE WITH THE DEPARTMENT OF COMMERCE IN THE IMPLEMENTATION AND ENFORCEMENT OF THE DO NOT CALL REGISTER PROGRAM."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Department" means the department of commerce provided for in 2-15-1801.

(2) "Local exchange company" means the same as provided in 53-19-302.

(3) "Residential telephone subscriber" means:

(a) a person residing in this state who is the party identified in the account records of a local exchange company as responsible for payment of the telephone bill;

(b) any adult person authorized by the party listed in subsection (3)(a) to change telecommunications services or to charge services to the account; or

(c) any person contractually or otherwise lawfully authorized to represent the party listed in subsection (3)(a).

(4) (a) "Telephone solicitation" means any voice communication over a telephone for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services originating in Montana or elsewhere.

(b) Telephone solicitation does not include voice communications over a telephone to a residential telephone subscriber:

1 (i) with that residential telephone subscriber's prior express permission; or

2 (ii) who is an existing customer with whom the person or entity making the telephone solicitation
3 has had a prior relationship within the prior 12 months.

4 (5) "Telephone solicitor" means any natural person, firm, organization, partnership, association,
5 corporation, or other entity doing business in this state that makes or causes to be made a telephone
6 solicitation, including but not limited to calls made by use of automated dialing or recorded message
7 devices.

8
9 **NEW SECTION. Section 2. Do not call register -- individual registration -- rulemaking -- registration**
10 **renewal.** (1) (a) The department shall create and maintain a database containing the names, addresses,
11 and telephone numbers of all Montana residential telephone subscribers who have elected not to receive
12 telephone solicitations. The department shall update the do not call register at the beginning of each
13 month.

14 (b) The department may make the do not call register available to telephone solicitors via the
15 internet or other electronic means.

16 (2) (a) The department shall establish by rule the procedure by which a residential telephone
17 subscriber may have the residential telephone subscriber's telephone number entered in the do not call
18 register without cost to the residential telephone subscriber. The department shall maintain a toll-free
19 telephone number and a website on the internet as a means of allowing residential telephone subscribers
20 to enroll in the register.

21 (b) A residential telephone subscriber's enrollment in the do not call register becomes effective
22 60 days following the first day of the succeeding month of the residential telephone subscriber's
23 application to the department for inclusion in the register.

24 (c) A residential telephone subscriber will remain enrolled in the do not call register for a period
25 of 2 years or until the residential telephone subscriber requests that the department remove the residential
26 telephone subscriber's name from the register. If the residential telephone subscriber moves or receives
27 a new telephone number during the 2-year period or any subsequent renewal enrollment period, the
28 residential telephone subscriber may have the new information entered in the register without cost to the
29 residential telephone subscriber.

30 (3) (a) Prior to the end of a residential telephone subscriber's initial enrollment or subsequent

1 renewal enrollment in the do not call register, the department shall notify the residential telephone
2 subscriber by mail that the residential telephone subscriber's enrollment is about to terminate.

3 (b) The residential telephone subscriber, upon receiving notice from the department of the pending
4 termination of the residential telephone subscriber's enrollment, may renew the residential telephone
5 subscriber's enrollment by returning a renewal form supplied by the department, together with a renewal
6 fee of \$5. The renewal form and fee must be returned by the residential telephone subscriber within 30
7 days of the residential telephone subscriber's receipt of the notice.

8 (c) The department shall remove the telephone number of a residential telephone subscriber who
9 does not renew enrollment from the do not call register.

10

11 NEW SECTION. **Section 3. Telephone solicitor's access to do not call register -- rulemaking.** (1)

12 (a) It is the duty of any telephone solicitor engaging in the telephone solicitation of Montana residential
13 telephone subscribers to purchase the do not call register from the department.

14 (b) A telephone solicitor shall pay an annual fee established by the department by rule that is
15 commensurate with costs for access to the do not call register. The fee must be based on the calendar
16 year and must be prorated for telephone solicitors paying the fee for a period that is less than the full
17 calendar year in duration.

18 (2) A telephone solicitor's application to purchase the do not call register must contain the
19 telephone solicitor's name, address, telephone number, and any other information that the department may
20 require by rule.

21

22 NEW SECTION. **Section 4. Public education about do not call register.** (1) Local exchange
23 companies, working in cooperation with the department, shall place information in their white page
24 telephone directory informing their residential telephone subscribers of how to be included in the do not
25 call register.

26 (2) The department may use a portion of residential telephone subscriber renewal fees provided
27 for in [section 2] and a portion of the fees collected from telephone solicitors pursuant to [section 3] to
28 develop a program to inform the public of the existence of a do not call register and of the procedure for
29 enrolling in the register.

30

1

2 **NEW SECTION. Section 5. Violations -- penalties -- venue -- attorney fees -- program costs.** (1)

3 It is a violation of [sections 1 through 5] for a telephone solicitor to knowingly make or cause to be made
4 a telephone solicitation call to any residential telephone subscriber enrolled in the do not call register that
5 is current at the time that the telephone solicitation call is made.

6 (2) A telephone solicitor may not knowingly use any method to block or otherwise circumvent a
7 residential telephone subscriber's use of a caller identification device or service.

8 (3) (a) (i) Violators of subsection (1) or (2) are subject to a civil penalty of an amount not to exceed
9 \$2,000 for each violation.

10 (ii) A violation of subsection (1) or (2) also constitutes a violation of 30-14-103 and is subject to
11 the penalty provisions of Title 30, chapter 14, part 1.

12 (b) The department may file an action to recover civil penalties under this section in the district
13 court of Lewis and Clark County or the county in which the alleged violation occurred.

14 (c) The district court may award reasonable attorney fees and costs to the prevailing party in an
15 action brought under this section.

16 (d) The department or a residential telephone subscriber may bring a class action suit, if
17 appropriate, for a violation of this section.

18 (e) Local exchange companies shall fully cooperate with the department in any investigation of
19 an alleged violation of this section.

20 (4) The department shall place the fees and penalties collected under [sections 1 through 5] in a
21 special revenue account to be used to pay the cost of implementing and enforcing [sections 1 through 5].

22

23 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 5] are intended to be
24 codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to
25 [sections 1 through 5].

26

- END -